Human Rights Committee

**125th session,** 4- 29 March 2019

**Half-day general discussion**, 20 March 2019

Issues for consideration during a half-day general discussion in preparation for a General Comment on article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights

Note by the Rapporteur

Background

1. The Human Rights Committee, in accordance with article 40, paragraph 4, of the International Covenant on Civil and Political Rights, and Rule 76 of its Rules of Procedure, is mandated to prepare general comments on the various articles and provisions of the Covenant with a view to assisting States parties in fulfilling their obligations under the Covenant.

2. The Human Rights Committee decided at its 124th session (8 October – 2 November 2018) to develop a General Comment on article 21 of the International Covenant on Civil and Political Rights, in the light of experience obtained in the review of State reports and communications on this right. The Committee designated Christof Heyns as the Rapporteur for the drafting of the General Comment.

3. Article 21 of the ICCPR provides as follows:

‘The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.’

4. To start this process, the Committee is inviting national human rights institutions, civil society, academia and international organizations to provide relevant information to be taken into consideration by the Committee during the preparation of the first draft that will be submitted to States and others stakeholders for comments. Interested parties are invited to participate in this consultation process by commenting on the questions raised below, or by making submissions on any other aspects of article 21 that they deem relevant. This can be done by means of written submissions, to be provided to the Committee by 4 March 2019. The Committee will also hold half a day of oral consultations during its 125th session in Geneva on 20 March 2019from10h00 – 13h00.

Questions for discussion

The list of questions below is illustrative, not exhaustive. It reflects some of the main aspects which the Rapporteur plans to cover in the first draft of the General Comment. Stakeholders are invited to draw attention to aspects not listed below.

Questions directly related to article 21

1. What are the unique features of the right to peaceful assembly, which distinguishes it from other related rights such as freedom of expression and political participation? What is the function, added value and rationale for this right in a social system based on democracy and human rights? Does the scope of the right differ depending on the context (for example, is it the same during political transitions)?

2. How should the term ‘peaceful assembly’ be understood? When is one dealing with an ‘assembly’? Does it require the expression of an idea through a gathering, and if so, what is the hallmark of such an expression of an idea (e.g. does it necessarily entail an appeal to the public opinion)? Does it cover strikes? Or do all gatherings (e.g., also sporting, religious, cultural events, or) qualify as ‘assemblies’? Does it matter whether the organizers pursue a commercial interest? In order to qualify as an assembly, are there requirements about where should the gathering should take place – in public, private or on-line? Can one person form an assembly? When is an assembly not ‘peaceful’, and fall outside the scope of the protection of the particular right? What level of violence (or mere disruption?) is required not to consider it peaceful? To what extent can the violent conduct of certain individuals participating in the assembly be attributed to the group as a whole and render an assembly as a whole not peaceful?

3. Is freedom of assembly an individual or a collective right, or both? Who is the bearer of the right? The participants – individually or collectively? The organizers? Does the right cover planning/publication/advertisement of the event, and if so when does this start - before notification or other similar requirements have been met? Does the right cover protection of participants on their way to and from an assembly?

4. Article 2 (1) of the ICCPR requires States to ‘respect and ensure’ the rights in the ICCPR. Article 21 provides that the right of peaceful assembly ‘shall be recognised’. Does this in general terms mean that there is a duty on the State to ‘facilitate’ peaceful assembly, and what does such a duty to ‘facilitate’ entail? Does it mean that, while people exercise this right, the focus of law enforcement officials should be primarily on protecting the rights of all concerned rather than upholding law and order? (Are States thus required to show a certain level of tolerance to conduct when engaged in as part of peaceful assembly, and not meet it with the same force of the law as it would otherwise do?) How should the obligation to allow assemblies to take place within ‘sight and sound’ of its target audience be interpreted?

5. More specifically, what are the (negative and positive) obligations placed by the right of peaceful assembly on the State? How should the right be *respected* by the State (e.g. through the adoption of laws providing for and regulating its exercise in accordance with international law)? How should it be *protected*? To what extent does the State have an obligation to protect those engaged in peaceful assembly from interference by other members of the public? And should counter-demonstrations be protected to the same extent? How should the obligation on States to take precautionary measures to prevent violations of rights be understood in this context (for example in the context of preventing and reducing violence)? Is there an obligation on the part of the authorities to attempt to engage with assembly organisers and participants prior to the holding of the assembly? Are organisers required to engage with the authorities? Is there a special role for NHRIs in this regard? And other stakeholders (such as local governments)?

6. When and how may the right of peaceful assembly be limited? Are the limitations affected by the modalities of the assembly (e.g. whether they take place in the open or within a building, whether they are stationary gatherings or marches)? Is it correct to say there is a ‘presumption’ under the Covenant in favour of allowing peaceful assemblies, and the onus is on those wishing to restrict such assemblies to justify such limitations? How should the procedural requirement for limitations on the right in sentence two of article 21 (that limitations can only be imposed ‘by law’) and the substantive requirements (this can be done only where it is necessary to protect national security, etc.) be understood? What is their relationship to other articles of the Covenant, including article 22? In what way are the limits on article 21 different from the limits of article 19? How should such limitations be enforced – is there e.g. a role for criminal sanctions, and if so when? What are the alternatives? Who can be held criminally responsible for violent conduct of individuals or groups that participate? What are the safeguards that should be in place to establish whether limitations on peaceful assemblies are permissible (e.g. judicial review)? What does an ‘effective remedy’ mean in time sensitive contexts? How can transparency of decision-making in relation to assemblies be ensured?

7. What is the position as far as organiser accountability is concerned? Can the organisers be required to cover police costs, provide assurances in advance as far as reparations for damages are concerned, cleaning up services, medical services, etc.? Do particular obligations arise for organisers where participants in an assembly (including counter-demonstrations) intentionally advocate hatred, seek to intimidate others or call for or use force? How should concealment of their faces by participants be dealt with?

8. Should those wishing to exercise this right be required to apply for authorisation; or merely be required to notify the authorities; and if the latter, what form should the notification take (how onerous can expectations of notification be: how long in advance; does this apply to spontaneous assemblies (and how are they to be defined); etc.)? Is a system of voluntary notification workable? Are there international standards for establishing which assemblies need to be free from all requirements of notification and authorization; which the former and which the latter?

9. What sort of limitations may be placed on assemblies as far as their form (e.g. place, manner and time) or their contents (e.g. promotion of violence) is concerned? Are there circumstances under which all peaceful assemblies may be prohibited for a certain period in connection with states of emergencies, or independently of states of emergency? Can all assemblies in particular places (e.g. ‘neutral zones’ around parliaments, courts or monuments) or during a specific time be prohibited?

10. To what extent have general rules and good practices emerged on the facilitation of assemblies, to prevent an escalation of the situation, for example by not taking measures that might increase tensions, requiring law enforcement officials to be identifiable, etc.? How should the division of labour between the police and marshals be determined? What is the role of undercover policing?

11. What are the rules as far as the use of coercive measures against those engaged in assemblies is concerned, also if they turn violent? This includes detention, arrest and the use of force (articles 6, 7 and 9 of the ICCPR). How should the requirements of legality, precaution, necessity and proportionality in the context of the use of force be understood? What is the role of the various forms less-lethal weapons and equipment that are available, and how should they be regulated? May some such weapons never be used, or only under certain circumstances? Horses and dogs? Firearms? Private security providers? Can dispersal ever be justified where an assembly is entirely peaceful/non-coercive? What are the alternatives to dispersal?

12. What are the rights of those who wish to observe and record assemblies and how they are policed, including participants, bystanders and the media?

13. How should accountability for violations or abuses of rights by all parties concerned during assemblies be approached?

14. To what extent are private actors (including the owners of shopping centres) required to allow of facilitate peaceful assemblies? How should the responsibility of States in such situations be approached? How should public places (partly) owned by a State company (e.g. airports) be treated?

Relationship of article 21 with other provisions of the ICCPR

15. When may derogations (article 4) and reservations to article 21 be permitted and what non-derogable or otherwise fixed obligations in relation to assemblies do States retain where that is the case?

16. Is it correct to say that ‘there is no such thing as an unprotected assembly’ because even if the assembly is no longer peaceful, those involved retain their other rights, such as their rights against ill-treatment and the right to life?

17. What is the relationship between article 21 and other rights in the ICCPR, such as privacy (article 17); freedom of movement (article 12) freedom of expression and access to information (article 19); advocacy of hatred etc. (article 20); association (article 22); political participation (article 25); and equality and non-discrimination (articles 2 (1); 3; 26) (e.g. people who are frequently targeted, or in positions of vulnerability).

General

18. In interpreting article 21 of the ICCPR, should any weight be attached to possible differences between the right of peaceful assembly (*droit de réunion*); peaceful demonstration (or peaceful protest) (*droit de manifestation*) and the right of peaceful gathering (*droit de rassemblement*)?

19. In all of the above please keep in mind the role of gender in assemblies and the role of new technologies: the use of social media to organise and advertise assemblies; the use of mobile phones and other devices (CCTV cameras, satellites) to record assemblies; the use of body-worn cameras; etc. Moreover, to what extent does the right of peaceful assembly apply in the digital space? Can ‘gathering’ online impose obligations on States and other actors to facilitate it? May unmanned weapon or surveillance systems (remote or autonomous) be used by law enforcement officials during demonstrations?

20. Please identify ‘soft-law’ instruments that may be of relevance to the right of peaceful assembly. References to regional standards are also welcome.